but the presumptions in the succeeding section arise. If none of the sections is complied with the police officer must look elsewhere for his protection (which no doubt he will find in the Police Ordinance) and the presumptions in the succeeding sections do not arise, but whether these sections are complied with or not the fact that anything has been found in the possession of an accused person and the thing found itself are admissible in evidence, always provided, of course, they have some connection with the case.

I have no hesitation in dismissing the appeal against conviction.

As regards sentence, the accused is a first offender, it is possible on the evidence to take the view that she was an agent and not a principal and admittedly the fine of $2,000 is a heavy one. If the case were an isolated one I might be prepared to say the fine is too heavy. It is not, however, an isolated case. I am not prepared to say that in itself this 1,000 characters lottery is necessarily a bad thing and I have a very strong suspicion that were it stamped out to-morrow something else of the sort would take its place. But there is no doubt that at the present time it is being carried on in such a widespread way that the law itself is being brought into contempt, and it is my duty to do all in my power to see that that does not happen. If the law continues to be widely and publicly flouted, as it is being flouted, Magistrates before whom these cases come will have to give serious consideration to sending offenders to prison, and sending them to prison for long periods.

In the circumstances I am not prepared to reduce the sentence and the appeal against it is also dismissed.

Appeal dismissed.

ONG HIN WAH v. DENTAL BOARD, FEDERATION OF MALAYA.

[A. C. J. (Buhagiar, J.) September 29, 1953]

[Penang — Civil Appeal No. 6 of 1953]

Dentist — Registration of — Registration of Dentists Ordinance, 1948, ss. 5(1)(g) and 15(1)(a) — Removal of name from register by Dental Board — Necessity to act judicially.

This was an appeal against the decision of the Dental Board, Federation of Malaya, given on August 15th, 1952 by virtue of which the name of the appellant was removed from the Dental Register. The grounds of appeal were: (i) the Dental Board was wrong in holding that the appellant had obtained registration by fraudulent or incorrect statements; (ii) the Dental Board was wrong in deciding to remove the appellant's name from the Register of Dentists without allowing him to state his case and in so doing the Dental Board acted improperly and without regard to the principles of natural justice.

Held: (1) the Dental Board had not acted judicially in exercising the powers under section 15(1)(a) of the Registration of Dentists Ordinance, 1948; (2) section 5(1)(g) of the Ordinance requires that a person should have practised dentistry in any State or Settlement in the Federation for a period of three years immediately preceding the 15th day of April 1948 and as the appellant had not so practised he did not have the necessary qualifications for registration.

Cases referred to :—

(1) *Board of Education v. Rice* (1911) A.C. 179.

(2) *Local Government Board v. Arlidge* (1915) A.C. 120.

(3) *General Medical Council v. Spackman* (1943) A.C. 627.

(4) *Partridge v. General Council of Medical Education & Registration of the United Kingdom* (1890) Q.B.D. 90.

CIVIL APPEAL.

Yong Pung How for the appellant.

F. G. Pooley for the respondent.

Cur. Adv. Vult.

Buhagiar, J. : — This is an appeal against the decision of the Dental Board, Federation of Malaya given on 15th August, 1952 by virtue of which the name of the appellant was removed from the Dental Register. The Board struck off the appellant's name without communicating with him or giving him an opportunity of being heard. The action of the Board was taken under section 15(1)(a) of the Registration of Dentists Ordinance, 1948 (F. of M. No. 7 of 1948). The grounds of appeal are :—

1. The Dental Board was wrong in holding that the appellant had obtained registration by fraudulent or incorrect statements. The only statements made by the appellant in obtaining registration were contained in his application for registration dated 6th January, 1951 and all such statements were correct.

2. The Dental Board was wrong in deciding to remove the appellant's name from the Register of Dentists without allowing him to state his case, and in so doing the Dental Board acted improperly and without regard to the principles of natural justice.

With regard to the second ground of appeal Counsel for the appellant submitted that before his name could be removed from the Register the appellant was entitled to be heard; he referred to *Board of Education v. Rice*[1], *Local Government Board v. Arlidge*[2] and *General Medical Council v. Spackman*[3]. It is clear that if the powers conferred on the Board under the said section are judicial or quasi-judicial and not merely ministerial the Board was wrong in coming to a decision without observing one of the fundamental principles of natural justice, *audi alteram partem*. In *Partridge v. General Council of Medical Education & Registration of the United Kingdom*[4] Lord Esher, M.R., at page 96 said :—

"Now it appears to me that it is a true proposition to say that, when a public duty is imposed by Act of Parliament upon a body of persons, which duty consists in the exercise of a discretion, it cannot be said that the exercise of that discretion is merely a ministerial act."

In this case the public duty referred to was that contained in section 11 and section 13 of the Dentists Act, 1878; the latter section corresponds substantially to section 15 of the abovementioned Ordinance.

In exercising the powers under section 15(1)(a) the Dental Board should have acted judicially and communicated with the appellant or given him the opportunity of being heard before arriving at a decision. This was not done and on that ground the appellant's name should be restored in the Register, without prejudice, however, to the jurisdiction of the Board under section 15 if they should be of opinion that the facts bring the appellant's case within that section.

With regard to the first ground of appeal, the question whether the appellant obtained registration by a fraudulent or incorrect statement is a matter for decision, in the first instance, by the Board after having exercised their discretion judicially; but, as this may be decisive on whether the appellant has the necessary qualifications to have his name entered in the Dental Register, I have been asked to give a ruling on the interpretation of the word "prior" used in "for a period of three years *prior* to the 15th day of April, 1948" in section 5(1)(g)(ii) of the Registration of Dentists Ordinance, as amended by Ordinance No. 33 of 1950.

The appellant practised dentistry in Johore from 1932 to 1941 and in Singapore from 1942 to 1949, without being registered under the Johore Enactment or the Straits Settlements Ordinance; having passed the necessary examination he applied for registration under the Registration of Dentists Ordinance, 1948 and was so registered in December, 1951. Counsel for the appellant submitted that "for a period of three years prior to the 15th day of April, 1948" means a period of three years *at any time* before the said date. Counsel for the respondents submitted that in the context of the whole Ordinance "prior" means immediately preceding. For the proper construction of this word it is, I think, essential to look at the objects of the Ordinance. *Maxwell on Interpretation of Statutes*, 9th edition at page 236 states as follows:—

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistable conviction that the Legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. The rules of grammar yield readily in such cases to those of common sense."

(See the authorities therein quoted).

It is obvious from the context of the amendments to section 5 introduced by the amending Ordinance of 1950 that the object of those amendments was to make provisions for certain persons who being excluded from registration under the principal Ordinance and for whom the practice of dentistry was their principal means of livelihood or their sole means of livelihood would suffer financial hardship, if they were precluded from continuing to practice dentistry. Paragraph (f) of sub-section (1) of section 5 provides for the registration of persons who before 1948 were practising dentistry in the State of Perlis at a time when there was no legislation governing dentists in that State. Paragraph (g) of the same sub-section applies to persons who, though not registered under the legislation in force in any of the other Malay States or the Settlements, had, in fact, been practising dentistry. The amendment to section 5 provides that these two categories of persons can be considered for registration only if the practice of dentistry was their principal means of livelihood in the case of persons practising in Perlis and their sole means of livelihood in the case of other persons.

That the above is the object of the amending Ordinance is supported by the speech made by the Director of Medical Services on moving the Second Reading of the Bill at the Meeting of the Legislative Council held on the 14th June, 1950. In that speech the Director of Medical Services referring to paragraph (g) of sub-section (1) said:—

"The second category are those people who have been since the liberation practising dentistry without any legal title, because they took up that profession during the Japanese occupation. They were excluded from the practice of dentistry in all parts of the Malay States and the Straits Settlements by the legislation which came into effect soon after 1933, except in Perlis. They started work during the Japanese occupation — some of them in a way that calls for good deal of sympathy — because going on into these cases one finds that many of them are family connections in established dental businesses. It was intended in the 1948 legislation that this practice should come to an end. They were therefore deliberately excluded in the 1948 Ordinance, but since then representations have been made that their exclusion will cause real hardship, and it is the opinion of Government that it is reasonable to allow them to be put on the Register, subject to the conditions that they satisfy the Board that they have been practising dentistry as their sole means of livelihood for a period of three years prior to 15th April, 1948, and that they are able to satisfy the examiners appointed by the Board that they can carry out the ordinary practice of dentistry in a way it will not be detrimental to the public.

That being the object of the amending Ordinance I think that "for a period of three years prior to the 15th day of April, 1948" must mean for a period of three years immediately preceding the 15th day of April, 1948. Counsel for the appellant submitted that the words "if he is *still* in practice" used in sub-paragraph (ii) of paragraph (g) of sub-section (1) support the view that "prior" does not mean immediately preceding. It is to be noted that the word "still" used in this phrase does not refer to the time when the principal Ordinance came into force but to the time when a person in applying for registration has to show that he has practised dentistry "under conditions not detrimental to public health". Now under sub-section (3) of section 5 of the Ordinance the category of persons in paragraph (g) were given until the 1st day of September, 1950 to make applications for registration. As this category of persons were excluded from registration when the principal Ordinance came into force on the 8th April, 1948 they could not lawfully practise dentistry after that date and would normally have ceased to practise dentistry on that date, and at the time they made applications for registration by virtue of the provisions introduced by the amending Ordinance they would not be "still" in practice.

As the appellant had not practised dentistry in any State or Settlement in the Federation for a period of three years immediately preceding the 15th day of April, 1948 he has not the qualifications required by section 5(1)(g) for registration under the Registration of Dentists Ordinance, 1948.

Appeal dismissed.

NG YEE v. PUBLIC PROSECUTOR.

[A. Cr. J. (Mathew, C.J.) May 27, 1953]

[Raub — Criminal Appeal No. 1 of 1953]

Criminal Procedure Code (Cap. 6), s. 399(i) — Admissibility of report of Government Chemist — Irregularity curable under s. 422 of the Criminal Procedure Code.

The appellant was convicted of being in possession of prepared opium contrary to section 9(1)(b) of the Dangerous Drugs Ordinance and was sentenced. Counsel for appellant submitted that the report of the Government Chemist was not served on the appellant 10 days before the trial as required by section 399 of the Criminal Procedure Code, and that this failure on the part of the prosecution rendered the report inadmissible as evidence. Without this evidence, he submitted that there was no evidence to support the conviction.

Held: the admission as evidence of a report by a Government Chemist which was not served on an accused 10 days before the trial as required by section 399 of the Criminal Procedure Code is an irregularity and not an illegality. It can be cured by section 422 of the Code.

[Editorial Note: Attention is drawn to the case of Chong Yik v. Public Prosecutor (1952) M.L.J. 72, where Storr, J. held that proviso to section 399(i) of the Criminal Procedure Code is condition precedent and if not complied with the report of the Government Chemist cannot be admitted. If it is wrongly admitted in evidence, that wrongful admission is an illegality which cannot to cured under section 422 of the Criminal Procedure Code.]

Case referred to:—

(1) *Chong Yik v. Public Prosecutor* (1953) M.L.J. 72.

CRIMINAL APPEAL.

P. P. Nair for the appellant.

J. D. Peterkin (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Mathew, C.J.: — The appellant in this case was convicted of being in possession of prepared opium contrary to section 9(1)(b) of the Dangerous Drugs Ordinance, 1952, and was sentenced to one year's rigorous imprisonment and a fine of $4,000 or 2 years r.i. in default.

Mr. P. P. Nair for the appellant has submitted that the report of the Government Chemist was not served on the appellant 10 days before the trial, as is required by section 399 of the Criminal Procedure Code, and that this failure on the part of the prosecution rendered the report of the Government Chemist inadmissible as evidence. Without this evidence, he submits, that there is no evidence to support the conviction. In support of his submission he has referred to the case of *Chong Yik v. Public Prosecutor*[1]. Section 399(i) reads:—

"Any document purporting to be a report under the hand of any of the persons mentioned in sub-section (ii) of this section upon any person, matter or thing examined or analysed by him on any document purporting to be a report under the hand of the Registrar of Criminals upon any matter or thing relating to finger impressions submitted to him for report may be given in evidence in any enquiry, trial or other proceeding under this Code unless such person or Registrar shall be required to attend as a witness —

(a) by the Court; or

(b) by the accused, in which case the accused shall give notice to the Public Prosecutor not less than three clear days before the commencement of the trial:

Provided always that in any case in which the Public Prosecutor intends to give in evidence any such report he shall deliver a copy thereof to the accused not less than ten clear days before the commencement of the trial."

The report of the Chemist was produced by Inspector Yusoff of the Raub Police and admitted as evidence. The report was admitted wrongly, as the appellant had not been given 10 days notice of its production. It is, I think, clear that the condition